846.

SUPREME COURT OF THE UNITED STATES.

No. 211.

THE UNITED STATES, APPELLANTS,

vs.

JOHN NANCARROW'S ADMINISTRATORS.

APPEAL FROM THE DISTRICT COURT, U. S., FOR THE EASTERN DISTRICT OF LOUISIANA.

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[GIDEON, Print.]

UNITED STATES DISTRICT COURT,
Eastern district of Louisiana.

NANCARROW'S ADMINISTRATORS vs. THE UNITED STATES. } No. 142 of land causes.

Be it remembered, that, on the thirteenth day of July, A. D. 1848, Mary W. Nancarrow and her husband, Wesley Coleman, administrators of John Nancarrow, deceased, by their attorney and solicitor, H. H. Strawbridge, came into the office of the clerk of said court (then the U. S. district court for the district of Louisiana) and, under the act of June 17th, 1844, there caused to be filed in the words following, their

Petition.

To the honorable T. H. McCaleb, judge of the district court of the United States, for the district of Louisiana.

The petition of Mary W. Nancarrow, wife of Wesley Coleman, and by him herein duly authorized and assisted, the said Mary being sole heir, and, conjointly with said Wesley, administrator of the succession and estate of her brother, John Nancarrow, deceased; both of your petitioners aforesaid being residents and citizens of the State of Louisiana, respectfully represents:

That, in the year 1796 or 1797, the Baron de Carondelet, then being the civil and military governor general of the province of Louisiana, as the lawful representative of the King of Spain, to whose government said province then belonged, granted to the Baron de Bastrop, then a resident of said province, a tract of land of twelve leagues square, situated upon the Ouachita river, and upon the bayous Barthelemi and Siard, or Liard, within the limits of said province, and within the jurisdiction of this honorable court; which grant is commonly known and described as "the Bastrop Grant," and to which was annexed a figurative plat or plan thereof, designating the land so granted by certain metes and bounds, and verified by the Spanish surveyor general for said province, Don Carlos Laveau Trudeau; and, for a more full and specific description of said grant, your petitioners refer to a certain copy thereof, executed and certified by Don Vicente Fernandez Tejeiro, formerly commandant and ex officio notary public at and for the port and district of Ouachita, in the province aforesaid, bearing date on or about the 25th day of January, 1804; and they likewise refer to a copy of the plan of survey aforesaid, made by said Trudeau, surveyor general aforesaid, from the original executed by himself, said copy bearing date New Orleans, the 3d day of December, 1806. All which authentic copies are on file in the suit entitled "Mayor, Aldermen, and Inhabitants of Philadelphia and New Orleans

vs. the United States," No. 21, on the docket of land suits of this honorable court. And, for further information respecting the grant aforesaid, your petitioners refer to pages 308, 309, and 310, of volume , of the work commonly known as the American State Papers, on public lands, published in the year 1834 by authority of Congress, and likewise to page 774 of the second volume of said work, for translations of the aforesaid documents, grant, and plan. And they aver, that said Baron de Carondelet had full power and authority, under the laws, customs, and usages of the Spanish government, to make said grant, and that the same was and is valid; that, if any conditions were annexed to the same by the said governor general, and to be performed and executed by the said Baron de Bastrop, such conditions were duly accomplished and fulfilled by said De Bastrop; or, if not fully and duly fulfilled by him, that he was prevented from accomplishing and fulfilling the same by the act or order of said Baron de Carondelet, governor general aforesaid, or by some other public authority of said province, whereby the title of said Baron de Bastrop to said grant became unconditional, absolute, and irrevocable, prior to the cession of Louisiana to the United States; and that the same was protected and secured to him, as his private property, by the treaty between the United States and the French Republic, of the 30th day of April, 1803; and might have been perfected into a complete title, under and in conformity with the laws, customs, and usages of the Spanish government under which it originated, had not the sovereignty of the country been transferred to the United States.

Your petitioners furthermore show, that, on or about the 26th or 27th day of December, 1806, the original title deeds, or deed of concession, given by the Spanish government aforesaid to the Baron de Bastrop as evidence of said grant, together with many other muniments of title thereto, were delivered into the possession and custody of Hatch Dent, then deputy register of the United States, at Rapides or Opelousas, in the then Territory of Louisiana, and duly authorized by law to receive and receipt therefor, as by the official receipt of said Dent, on file in the aforesaid suit, No. 21, on the land docket of this honorable court, will more fully appear; and that various other muniments of the Baron de Bastrop's title to said grant were likewise, at various times, deposited in the land office aforesaid, especially a certain petition of the above named De Bastrop to the aforesaid governor general, Baron de Carondelet, dated 10th June, 1797, together with a decree of said Carondelet thereon, granting the same, a copy of which is likewise on file in said suit No. 21.

And your petitioners show, that the fault of the officers of the United States Government, in whose care and custody said title deeds and documents had been placed, or by time, the action of the claimants, or the act of some person or persons unknown, or by other causes or casualties of which your petitioners are ignorant, all said original documents, if not still in the possession of the United States, or its agents, or officers, have been irrevocably mislaid, lost, or destroyed without any fault

on the part of your petitioners, and at some time to them unknown; and that, although strict and careful search and inquiry have been made therefor, and due diligence used to discover and obtain said documents, they remain still undiscovered and lost.

Your petitioners furthermore show, that, by act executed before Don Vicente Fernandez Fejeiro, commandant and ex-officio notary public aforesaid, at Ouachita, on or about the 25th day of January, 1804, a copy of which is on file in the aforesaid suit No. 21, the above named Baron de Bastrop sold, conveyed, and transferred to one Abraham Morehouse two undivided third parts of the grant aforesaid, as by a copy of said act, filed in the suit No. 21, already referred to, will more fully appear. That subsequently, by act executed on or about the 29th day of May, 1804, before Pedro Pedesclaux, a notary public in and for the city of New Orleans, a copy of which is on file in said suit No. 21, the said Baron de Bastrop sold, conveyed, and transferred to one Edward Livingston the remaining third part of said grant. And they furthermore show, that, on or about the 28th day of February, 1807, by act duly acknowledged before Henry Bry, parish judge and ex-officio notary public in and for the parish of Ouachita, a copy of which is also on file in the suit No. 21, already referred to, the said Morehouse and Livingston entered into a partition with each other, and by said act released, conveyed, and transferred to each other certain specific portions of said grant, according to a plan of survey and partition therein referred to, whereby said Morehouse became entitled to four certain tenth parts thereof, and said Livingston to six certain tenth parts thereof; that, by act of the 28th day of May, 1809, before Pierre Pedesclaux, notary public in and for the city of New Orleans, a copy of which is hereto annexed, said Livingston reconveyed and transferred to said Baron de Bastrop one hundred thousand arpens of land, lying within the part of said Bastrop's grant, to said Livingston assigned and belonging, and adjoining and bounded by lands of the State or Government, of Jean Baptiste Riviere, of Stephen Wante, and of said Livingston, the whole according to a plat or plan of survey of said 100,000 arpens, to said act annexed, and therein referred to, of which a copy is herewith filed; and by another act, before Philip Pedesclaux, notary public in and for the the city of New Orleans, a copy of which is also hereto annexed, the said Livingston formally ratified his previous deed of 28th May, 1809, as by said deed of ratification, dated 26th November, 1819, will more fully appear. And your petitioners furthermore represent, that, by act and indenture dated this 24th day of May, 1805, and acknowledged on the same day before Peter Pedesclaux, notary aforesaid, which original act is hereto annexed, the said Baron de Bastrop, although he had previously ceased to be titular proprietor of any portion of the Bastrop grant aforesaid, nevertheless transferred and conveyed his claim and title to sixty thousand acres thereof to the aforesaid John Nancarrow, in trust for the creditors of him, said Bastrop, and under the condition and obligation therein expressed, that said Nancarrow should, with all convenient speed, make sale and disposition of the said land in such

way as to him should seem best, for the most and best price that he could get for the same, either in large tracts or in small ones; and that the moneys raised from the sale of the said lands by the said John Nancarrow, after deducting all such just and reasonable expenses as might necessarily be incurred, and a reasonable compensation for his trouble in transacting the business, should be distributed and divided unto and among the said Nancarrow and all the said other creditors of the said Bastrop equally and proportionally according to their respective debts or claims, and for no other use, intent, or purpose whatsoever. Your petitioners also show, that when said Baron de Bastrop subsequently received from Edward Livingston a title to the hundred thousand arpens of land before mentioned, sixty thousand acres thereof became in equity and by operation of law subject to the deed of trust aforesaid, and vested in said John Nancarrow for the purposes thereof, and from him has passed to your petitioners, subject still to the conditions and objects of said trust. And they furthermore aver, that there are not, to your petitioners' knowledge, any persons claiming said lands, or any part thereof, by a different title from that of your petitioners, or holding possession of any part thereof, except as their tenants at will and for *for* them; but that said Bastrop grant, or portions thereof, has been by other claimants, under the primitive title, submitted to the land commissioners for the western district of Louisiana, who made a report unfavorable thereto, principally on the ground of the original title deeds not having been presented, and of the validity of said title being dependent and difficult abstract questions of law. And your petitioners also affirm, that they have never alienated any portion of the aforesaid sixty thousand acres.

Your petitioners pray that the several deeds and documents above recited, referred to, or annexed, be taken and considered as part of this petition; that the validity of their title and claim be *ac*quired into and decided by your honor; and that a decree be rendered in their favor, declaring them the true and lawful proprietors, in trust for the creditors of Philip Henry Neret de Tot Bastrop, baron de Bastrop, and forever quieting them in their possession and title as such, in and to the aforesaid sixty thousand acres of land; and that they be permitted to cause the same to be duly surveyed and patented according to law; and that in case it should be found that said land, or any portion thereof, have been sold or otherwise disposed of by the United States, or if the same should not have been heretofore located, then that it may be optional and lawful for your petitioners to enter the like quantity of land, to be taken from the public lands of the United States, in any land office in the State wherein such land of your petitioner lies, in conformity with the 11th section of the act of Congress of 26th May, 1824; and that all such other and further general relief be accorded them in the premises as the law may require, or unto equity may appertain.

(Signed,) H. H. STRAWBRIDGE,
Solicitor for petitioners.

Exhibits annexed to petition and filed therewith.

1°. Indenture before P. Pedesclaux, May 14th, 1805. Transfer by Baron de Bastrop to John Nancarrow.

This indenture, made and entered into this fourteenth day of May, in the year of our Lord one thousand eight hundred and five, between P. H. N. Tot Bastrop, of the Territory of Orleans, of the one part, and John Nancarrow, of the city of New Orleans, of the other part; whereas the said P. H. N. Tot Bastrop, on the day of the date hereof, is justly indebted unto his creditors respectively in different sums of money, which for various reasons he cannot now make satisfaction for; and whereas, also, the said P. H. N. Tot Bastrop hath consented and agreed to convey in fee simple to the said John Nancarrow his claim to sixty thousand acres of land, being part of an undivided tract of land granted and confirmed to the said P. H. N. Tot Bastrop by the then acting Governor of Louisiana, on the twentieth day of June, in the year one thousand seven hundred and ninety-seven, in trust of all such his creditors, to be applied to the payment and satisfaction of their respective debts. Now this indenture witnesseth, that the said P. H. N. Tot Bastrop, for and towards payment and satisfaction of the several respective debts of all such his said creditors, and in consideration of the sum of one dollar, to him in hand paid, the receipt whereof he doth hereby acknowledge, hath bargained, granted, sold, aliened, and confirmed, and by these presents do bargain, grant, sell, alien, and confirm, unto the said John Nancarrow and his heirs forever, all that claim which the said P. H. N. Tot Bastrop hath to sixty thousand acres of land, lying and being in the district of Ouachita, the same being part of an undivided tract of land now held by the said P. H. N. Tot Bastrop and others, and granted and confirmed to him on the twentieth day of June, in the year one thousand seven hundred and ninety-seven, to have and to hold [to] the said John Nancarrow and his heirs. Upon trust, nevertheless, and to the intent and purpose that he, the said John Nancarrow, shall, with all convenient speed, make sale and disposition of the said land in such way as shall to him seem best, for the most and best price that he can get for the same, either in large tracts or in small tracts; and that the moneys raised from the sale of the said lands by the said John Nancarrow, after deducting all such just and reasonable expenses as shall necessarily be incurred, and a reasonable compensation for his trouble in transacting the business, shall be distributed and divided unto and among the said John Nancarrow, and all his said other creditors, equally and proportionally, according to their respective debts, and for no other use, intent, or purpose whatever. And the said P. H. N. Tot Bastrop covenants, for himself and his heirs, to and with the said John Nancarrow, his heirs, &c., that he will from time to time, and at all times hereafter, make, do, and execute such further assurances touching the premises herein mentioned, to and for the uses, intents, and purposes herein expressed, as shall be reasonable and necessary; and that he will, as often as there shall be

occasion, assist the said John Nancarrow in making up, settling, and ascertaining the amount of the several debts which have been herein before expressed.

In witness whereof the parties to the preceding indenture have hereunto annexed their hands and seals the day above written.

(Signed,) BARON DE BASTROP, [SEAL.]
(Signed,) JOHN NANCARROW. [SEAL.]

In presence of—
(Signed,) JOAC'N LOZANO,
(Signed,) JOHN BTE. RAMIREZ.

Registered in the current book, volume ninety-one.

TERRITORY OF ORLEANS.

On the day of the date of these presents personally came and appeared before me, Peter Pedesclaux, notary public in and for the city of New Orleans, duly, and by lawful authority, admitted, commissioned, and sworn, residing in the said city, Phillip H. N. Tot Bastrop and John Nancarrow, and in my presence, and in the presence of Joachim Lozano and John Bt. Ramirez, of New Orleans aforesaid, did duly sign, seal, and, as for their act and deed, deliver the foregoing document to, and for the uses, intents, and purposes therein mentioned and expressed.

In testimony of the truth whereof, I, the said notary, have hereunto set my hand and notarial seal, at New Orleans aforesaid, in the Territory aforesaid, on the fourteenth day of May, in the year of our Lord one thousand eight hundred and five, and in the twenty-ninth of the American independence.

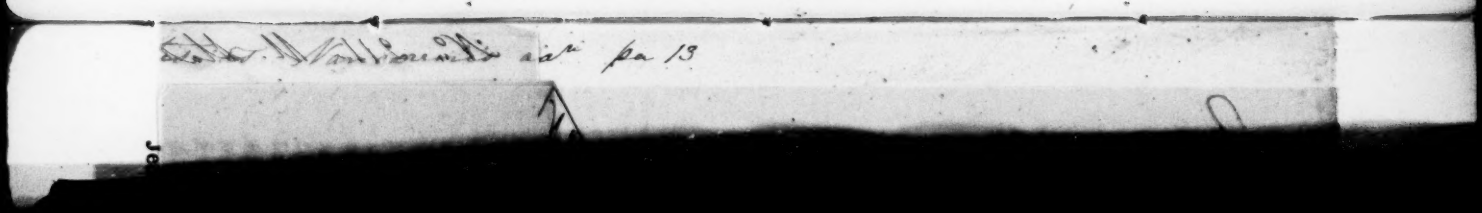
[SEAL.]

(Signed) PETER PEDESCLAUX,
Notary Public.

2o. *Edward Livingston to the Baron de Bastròp. Sale of* 100,000 *arpens,* 28*th May,* 1809.

Aujourd'hui dix-huitième jour du mois de Mars de l'année mil huit cent neuf, et la trente-troisième de l'independance Américaine.

Pardevant nous, Pierre Pedesclaux, notaire public des Etats Unis d'Amérique, à la Nouvelle Orléans, est comparu Mr. Edouard Livingston, avocat demeurant en cette ville. Lequl comme étant aux droits de Mr. Charles Linch, sur les terres situées au Ouachita, provenantes de la concession faite au Baron de Bastrop par le gouvernment Espagnol, nous a dit et déclaré que, par acte à notre rapport, le quinze Mai de l'année mil huit cent cinq, entre le dit Bastrop et les Sieur Linch et Abraham Morhouse au quatrième article du dit acte, le susdit Sieur Charles Linch s'était obligé de transferer au dit Baron de Bastrop cent mille arpens de terre de la ditte concession, et le réduisant à l'effet, il a par ces présentes, cédé, et transporté, des



à présent et pour toujours, les susdits cent mille arpens de terre au dit Sieur Baron de Bastrop icy représenté par le Sieur Nancarrow, acceptant pour son constituant, ses hoirs ou ayant causes.

Les susdits cent mille arpens de terre de superficie, situés au dit comté de Ouachita, joignant aux terres de l'Etat, de Mr. Jean Baptiste Riviere, Estienne Wante, et le sieur comparant, conformément au plan qui est annexé au présent acte, au moyen de tout quoi il s'est désisté et séparé de tous droits de propriété sur les susdits cent mille arpens de terre ci dessus ennoncés, en faveur du dit Sieur Baron de Bastrop, qu'il a saisi et revêtu pour, par lui, en jouir, faire et disposer comme de chose à lui appartenante dès maintenant et à toujours, et en prendre possession quand bon lui semblera; car ainsi, &c.

Fait et passé en notre étude à la Nouvelle Orléans, le jour et an que dessus, en présence des Sieurs Jean Bte. Ramires et Pierre François Simon Godefrois, témoins qui ont signé avec les parties et nous, notaire.

(Signé) EDW. LIVINGSTON,
GODEFROIS.

Pour copie conforme à l'original resté en mon étude pour recours; [SEAL.] en foi de quoi j'ai signé les présentes et j'ai apposé le sceau de mon office.

Nouvelle Orléans, 14 Juin, 1848.

(Signé) LOUIS T. CAIRE,
Notary Public.

[For plat see original, p. 13.]

I certify that the plan on the reverse hereof is a true and accurate copy of a plan annexed to an act of sale from Edward Livingston to the Baron de Bastrop, dated 19th March, 1809, before Pierre Pedesclaux, notary public, and deposited in the office of Louis T. Caire, notary public of this city.

(Signed) M. HARRISON,
U. S. deputy surveyor.

NEW ORLEANS, 14*th June*, 1848.

3o. *Edward Livingston to the Baron de Bastrop. Ratification of sale of* 100,000 *arpens of land*, 26*th November*, 1819.

Pardevant Philippe Pedesclaux, notaire public, pour la ville et paroisse de la Nouvelle Orléans, et en présence des témoins ci-après nommes: Fut présent Mr. Edouard Livingston, demeurant en cette ville, lequel a dit et déclaré que par acte devant jeu Sieur Pierre Pedesclaux, lors notaire, en date du dix-huit Mars, mil huit cent neuf, et en présence de Sieurs Pierre François Simon Godefroy et Jean Baptiste Ramires, témoins à ce requis, le dernier mort depuis, il a transporté, comme étant aux droits du Sieur Charles Lynch, cent mille arpens de terre, situés au Ouachita, à Mr. le Baron de Bastrop, representé par le Sieur Jean Nancarrow, chargé de sa procuration; lequel acte de transport n'a

été signé que par le comparant et le Sieur Godefroy, l'un des témoins.

Et le comparant, désirant que le dit acte de transport ait son entière execution comme s'il eut été signé dans les temps par toutes les parties, les témeins et le notaire declare, en tant qu'il est besoin, l'approuver, confirmer et ratifier en tout son contenu; ce qui a été accepté par le dit Sieur Nancarrow, à ce présent agissant au nom et comme chargé de la procuration qui lui a donné le Sieur Baron de Bastrop, par acte enrégistré en cette étude le quatorze Mai, mil huit cent cinq.

Fait et passé en l'etude à la Nouvelle Orléans, le vingt-six Novembre, mil huit cent dix-huit, en présence des Sieurs Michel Fourcisy et Vincent Bilote, témoins qui ont signé avec le comparans et le dit notaire.

(Signé) EDW. LIVINGSTON,
JOHN NANCARROW,
FOURCISY,
VTE. BILOTE,
PHI. PEDESCLAUX,
Not. pub.

Pour copie conforme à l'original resté en mon étude pour recours; en foi de quoi j'ai signé les présentes, auxquelles j'ai apposé le sceau de mon office.

(Sig'd) LOUIS T. CAIRE, [L. S.]
Not pub.

N. ORLEANS, 14 *Juin*, 1848.

4o. *Letter of administration to Mary W. Nancarrow and Wesley Coleman on estate of John Nancarrow, February* 10, 1829.

The State of Louisiana, city of New Orleans. Court of probates.

This shall certify, to all whom it may concern, that on the thirteenth day of December, in the year of our Lord one thousand eight hundred and twenty-eight, and the fifty-third of the independence of the United States of America, an application was made to the hon. judge of the court of probates in and for the parish and city of New Orleans, by Mary W. Nancarrow, wife of Wesley Coleman, and of Wesley Coleman, her husband, praying that they might be appointed administrators to the estate of the late John Nancarrow.

Now, know ye, that the said Mary W. Nancarrow, wife of Wesley Coleman, and of Wesley Coleman, her husband, have been and are hereby appointed administrators to the said estate, and that they have fulfilled all the requisites of the law.

Witness our hand and the seal of the said court of probates, this tenth day of February, in the year of our Lord one thousand [L. S.] eight hundred and twenty-nine, and the 53d of the independence of the United States.

(Signed) JS. PITOT, *Judge.*
(Signed) MARTIN BLACHE,
Register of Wills.

A true copy. Clerk's office, second district court of New Orleans, this 16th June, 1848.

(Signed) P. M. BERTIN,
Dy. Clerk.

And thereupon, on the 14th day of July, A. D. 1848, was issued from the clerk's office the following

Citation.

UNITED STATES DISTRICT COURT,
For the district of Louisiana.

The President of the United States of America, to the marshal of the United States for the district of Louisiana, greeting:

You are hereby commanded to summon Thomas J. Durant, esq., U. S. district attorney for the said district, to be and appear before the honorable district court of the United States, for this district, on the first Monday of September, 1848, there and then to answer a petition in chancery, filed in said court against the United States, in a land suit wherein the administrators of John Nancarrow are plaintiffs, and the United States are defendants; and also to notify the said attorney that a failure on the part of the said defendants to enter their appearance in the said suit in the office of the clerk of the said court, on or before the first Monday of September aforesaid, may cause the said petition (a copy of which, to be delivered by you to the said attorney, accompanies this citation) to be by the said court taken pro confesso.

Herein fail not, and have you then and there this writ, with your endorsement thereon as to how you shall have executed the same.

Witness the hon. Theo. H. McCaleb, judge of the said court, this fourteenth day of July, A. D. 1848, and 73d year of American [SEAL.] independence.

N. R. JENNINGS, *Clerk*,
(Signed) By ROBT. M. LUSHER, *Deputy clerk*.

Marshal's return thereon.

Received July 14th, 1848, and on the 21st inst. I served a copy of the within citation and a copy of petition on Thos. J. Durant, esq., at his office in New Orleans, by leaving the same with C. W. Hornor, esq.

Returned July 22d, 1848.

(Signed) J. PRADOS, Jr.,
Deputy U. S. Marshal.

And afterwards, to wit, on the 16th day of August, A. D. 1848, the United States, defendant, appeared by their attorney, and filed the following

Demurrer.

ADMINISTRATORS OF NANCARROW
vs.
The UNITED STATES.

To the honorable Theo. H. McCaleb, the judge of the district court of the United States, for the district of Louisiana.

The demurrer of the United States, the defendants, to the petition and bill filed herein by the administrators of John Nancarrow.

And now comes Thomas J. Durant, attorney of the United States for the district of Louisiana, and not confessing or acknowledging all or any of the facts and allegations set forth in the said petition and bill of the administrators of John Nancarrow, he demurs in law thereto, and says, that he is not bound to answer the same, and for cause of demurrer he shows that the said administrators of John Nancarrow, *he demurs in law thereto, and says, that he is not bound to answer the same, and for cause of demurrer he shows, that the said administrators of John Nancarrow*, the petitioners, have not by their petition made such a case as entitles them to relief under the act of Congress of 17th June, 1844, for this, to wit, that the said petition and bill was not filed within two years after the 17th day of June, 1844, being the date of the approval of the act of Congress, entitled "an act to provide for the adjustment of land claims within the States of Missouri, Arkansas, and Louisiana, and in those parts of the States of Mississippi and Alabama, south of the thirty-first degree of north latitude, and between the Mississippi and Perdido rivers," but that the said petition and bill, according to the said act and the act of 26th May, 1824, which is therein revived, should have been filed within two years from the date of the said act of 17th June, 1844; that after the lapse of the said two years no claimant can, by said laws, avail himself of the benefits and privileges which they confer; that the court is therefore without jurisdiction of the petition, and that this suit cannot be maintained.

Wherefore the attorney aforesaid, for these and divers other good causes of demurrer appearing in the aforesaid petition, doth demur to the said petition, and to all the matters and things therein contained, and prays the judgment of this honorable court here in the premises, whether he shall be compelled to make any further or other answer to the aforesaid petition and bill, and he prays for general relief, and to be hence dismissed, and that petitioners be condemned to pay all costs.

(Signed) THOMAS J. DURANT,
Attorney of the United States,
for the district of Louisiana.
By CHARLES W. HORNOR.

And afterwards, on the 29th day of March, A. D. 1849, being the at February term of said court, was duly entered on the minutes the following

852.

Continuance.

Thursday, March 29th, 1849.

Present, the honorable Theo. H. McCaleb.

NANCARROW'S ADMINISTRATORS
vs.
THE UNITED STATES. } No. 142.

This case set down for to-day on the demurrer filed by the defendants, was also continued until Monday, the 2d proximo, 10, a. m.

And afterwards, to wit, on the 14th April, 1849, being at the same term of said court, was recorded on the minutes the following

Trial and overruling of demurrer.

Saturday, April 14th, 1849.

Present, honorable Theo. H. McCaleb.

NANCARROW'S ADMINISTRATORS
vs.
THE UNITED STATES. } No. 142.

The demurrer filed by the defendants on the 16th of August, 1848, was this day, by consent, taken up for trial.

I. and H. H. Strawbridge, esqs., for the claimants, Thos. J. Durant, esq., U. S. district attorney, for the defendants, present.

When after hearing argument of counsel, the court ordered that said demurrer be overruled, and that the defendants file their answer to complainants' petition.

Thereupon, on the twenty-first day of April, 1849, the United States, defendants, appeared by their attorney, and filed the following

Answer.

NANCARROW'S ADMINISTRATORS
vs.
THE UNITED STATES. }

To the honorable Theodore H. McCaleb, judge of the district court of the United States, for the eastern district of Louisiana.

The answer of Thomas J. Durant, attorney of the United States for the eastern district of Louisiana, and of the defendants to the bill of complaint and petition of Nancarrow's administrators and others, complainants and petitioners.

The attorney of the United States aforesaid, now and at all times hereafter, reserving to himself, and to the said defendants all and all manner of benefit or advantage of exception, which can or may be had or taken to the many errors, uncertainties, and other imperfections in

the said complainants' said bill of complaint and petition contained, for answer thereto, or unto so much and such parts thereof as the attorney aforesaid and these defendants are advised is or are material for them, or necessary for them, to make any answer unto, this defendant, the attorney of the United States aforesaid, saith, that the present action is brought too late, because more than two years had elapsed before the filing of the petition since the seventeenth day of June, 1844, and by law that the suit could only be brought within two years from that date.

And further answering he saith, that he is a stranger to the several matters and things in the said complainants' said bill of complaint and petition set forth, and of all of them he demands full and complete proof.

And this defendant further saith, that he claims such rights and interests, under the treaties, statutes, and laws of the United States, pertinent to this matter, for and on behalf of the United States, as this honorable court shall be of opinion that the United States are justly entitled to.

All of which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed, with his reasonable costs and charges in this behalf most unlawfully sustained.

(Signed) THOMAS J. DURANT,
Att'y U. S., for E. D. La.

And afterwards, to wit, on the 7th May, 1849, was by the plaintiffs filed in court the following

Replication.

NANCARROW'S ADMINISTRATORS
vs.
THE UNITED STATES. } No. 142.

The replication of the complainants herein to the answer of the United States, saith:

These replicants, saving and reserving unto themselves all manner of advantage of exception to the manifold insufficiencies of the said answers, for replication thereunto say, that they will aver and prove their bill aforesaid to be true, certain, and sufficient in the law to be answered unto; and that the said answers of the said defendants are uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things these repliants are and will be ready to aver and prove as this honorable court shall direct; and humbly prays as in and by his said bill he hath already prayed.

(Signed) H. H. STRAWBRIDGE,
Of complainants' solicitors.

And thereafter, to wit, on the 23d day of May, A. D. 1849, being at the May term of said court, there was filed in the clerk's office, by the parties, the following

Consent of submission of case.

NANCARROW'S ADMINISTRATORS
vs.
THE UNITED STATES. } No. 142.

United States district court, for the eastern district of Louisiana.

This case is submitted on the following evidence, viz., all the depositions and documents introduced in the case of the Mayor, Aldermen, and Inhabitants of Philadelphia and New Orleans vs. The United States, No. 21, of the land docket of this court, as noted in the clerk's memorandum of evidence in that cause, (excepting the mesne conveyances.)

The notarial deed of trust from Baron de Bastrop to John Nancarrow, and all other title deeds, plans, and mesne conveyances referred to in the complainants' petition, and under which they claim title. Also the depositions taken in the cause.

(Signed) THOMAS J. DURAND,
Att'y U. S, for E. D. La.
" H. H. STRAWBRIDGE,
May 23d, 1849. *Solicitor for petitioners.*

Note in reference to evidence.

The notarial deed of trust from Baron de Bastrop to John Nancarrow, and all the other title deeds, plans, and mesne conveyances, referred to in the complainant's petition, are copied on folios 8, 10, 11, 12, 13, 14, 15, and 16 of this transcript.

The plaintiffs also offered in evidence, on the 26th May, 1849, being at the May term of said court, and the day of trial of said cause, the following

Deposition of Mrs. M. A. Nimmo.

United States district court, eastern district of Louisiana.

NANCARROW'S ADMINISTRATORS
vs.
THE UNITED STATES. }

Saturday, May 19th, 1849.

Testimony taken by consent of parties, M. W. Hoffman, esq., appearing for H. H. Strawbridge, attorney for plaintiffs; and Thomas J. Durant, esq., United States district attorney, for defendants.

Present, Mrs. Mary Ann Nimmo, a witness for the plaintiffs, being sworn, deposes as follows:

Witness was in 1803 acquainted with Miss Polly Nancarrow, who married Mr. Thompson in 1807. He subsequently died, and witness met Mrs. T. in 1845, who had then become, by second marriage, Mrs. Coleman. Witness saw Mrs. Coleman's brother once or twice in Cincinnati, (in 1803,) his name was John Nancarrow.

In 1803, Miss Polly and John had a father living, but no mother. Witness does not know whether the father be now dead or not.

The two children spoken of were the only two living at the time mentioned by witness. Witness never understood that Mr. Nancarrow ever had any other children than the son and daughter alluded to.

When witness saw Mrs. Coleman in 1845, the latter spoke of her father as having been dead many years.

Witness never heard any of the family speak of there having been any other children than the son and daughter already spoken of.

Witness did not know Mr. Coleman until 1845; she had previously known Mr. Thompson, however.

Cross questions.

Witness does not know where Mrs. Coleman now is; she was about 18 or 20 when witness first knew her; she was an American, so far as witness knows, and resided in Kentucky. She was on a visit to Cincinnati when witness first saw her, and made that place her home for several years.

Witness was acquainted with John Nancarrow, but not particularly well; does not know where he died; does not know whether he was a married man.

(Signed) MARY ANN NIMMO.

Witness—

(Signed) ROBERT M. LUSHER,
Deputy Commissioner in land causes.

And afterwards, at the May term, A. D. 1849, to wit, on the 26th day of May, 1849, was rendered and recorded on the minutes, and on the 30th day of May, 1849, duly engrossed and signed in the words following, the

Judgment of the court.

May term, 1849. Saturday, May 26th, 1849. Present, the honorable Theodore H. McCaleb.

NANCARROW'S ADMINISTRATORS
vs.
THE UNITED STATES. } No. 142.

This cause having by consent of parties been submitted on the petition, answer, replication, exhibits, and proofs of record, together

with the depositions and documents introduced in the case of the Mayor, Aldermen, and Inhabitants of the cities of New Orleans and Philadelphia vs. the United States, No. 21 of the docket; and the court having carefully examined and maturely considered the same, the following judgment is thereupon ordered to be entered:

The petitioners in this suit have shown a clear title, under the Baron de Bastrop, to sixty thousand acres of the tract of twelve leagues square, conceded to him as a "poblador" by the Spanish colonial government of Louisiana, in 1796 and 1797, and commonly known as "Bastrop's grant."

For the reasons given in the case of the Mayor, Aldermen, and Inhabitants of Philadelphia and New Orleans against the United States, it is therefore ordered, adjudged, and decreed, that the petitioners, Mary W. Nancarrow and her husband, Wesley Coleman, as administrators of the succession of the late John Nancarrow, and the said Mary, as the sole heir of said John, be declared the true and lawful proprietors, in trust for the creditors of Philip Henry Neret de Tot Bastrop, baron de Bastrop, and subject to, and in conformity with, the stipulations and covenants of the deed of trust, dated the fourteenth day of May, eighteen hundred and five, and filed with their petition herein, of sixty thousand acres of land, forming a part of, and to be taken from, that certain tract of one hundred thousand superficial arpens, situated in the said Bastrop grant, adjoining the lands now or formerly belonging to the State, Jean Baptiste Rivière, Stephen Wante, and Edward Livingston; the whole according to the deed of reconveyance from said Livingston to the Baron de Bastrop, dated the 28th of May, one thousand eight hundred and nine, before Pierre Pedesclaux, notary public, and the deed of ratification thereof from said Livingston to said de Bastrop, before Philip Pedesclaux, notary public, dated the 26th of November, (1819,) eighteen hundred and nineteen, and according to the plans of survey in said deed or deeds referred to; that said Mary and Wesley, in their aforesaid capacities, be forever quieted in their possession of and title to said sixty thousand acres of land; that they be permitted to cause the same to be duly surveyed and patented according to law; and in case it should be found that said land or any portion thereof has been sold or otherwise disposed of by the United States, or if the same should not have been heretofore duly located, that it may be optional and lawful for the petitioners to enter the like quantity of land, to be taken from the public lands of the United States, in any land office in the State wherein such alienated or non-located land of the petitioners lies, in conformity with the 11th section of the act of Congress of 26th May, 1824.

Judgment rendered 26th May, 1849.

Judgment signed 30th May, 1849.

(Signed) THEO. H. McCALEB, [SEAL.]
U. S. judge.

And further, at the same term, and on the said 30th day of May, A. D. 1849, was moved for in open court, granted and duly recorded, the following order of appeal:

WEDNESDAY, 30*th May*, 1849.

Present, the hon'ble Theo. H. McCaleb.

NANCARROW's adm'rs
vs.
The United States. } No. 142.

On motion of Logan Hunton, attorney of the United States for the district aforesaid, and of Thomas J. Durant on the same behalf, and on giving the court to understand and be informed that the United States are injured and aggrieved by the judgment of this honorable court rendered against them at this term, in the matter of Nancarrow's administrators versus the United States, and desire to appeal therefrom.

It is thereupon ordered by the court, that an appeal be allowed in favor of the United States from the judgment aforesaid, returnable to the Supreme Court of the United States at the next term thereof after the date of this order.

And on the 27th October, A. D. 1849, was filed by the parties in the clerk's office the following agreement, adjourning return day of appeal; and on the 28th October, 1850, was the same renewed as hereinafter appears.

Eastern district of Louisiana, U. S. district court.

NANCARROW's adm'rs
vs.
The United States. } No. 142.

It is herein agreed, between the party plaintiff and the defendants, that the return day of the appeal hitherto granted said defendants, and now of record, and made returnable on the first Monday of December, 1849, into the Supreme Court of the United States, be and it is hereby, by mutual consent and understanding, extended until the first Monday of December, 1850, or the term of the said Supreme Court next after that opening on the first Monday of December next.

(Signed) H. H. STRAWBRIDGE,
Of counsel for plaintiffs.
L. HUNTON, *U. S. attorney.*

NEW ORLEANS, *October* 29*th*, 1849.

Attest: (Signed) ROBT. M. LUSHER, *D'y Clerk.*

NEW ORLEANS, *October* 28*th*, 1850.

By mutual consent the return day of the appeal above mentioned is further extended until the December term, 1851, of the Supreme Court.

(Signed) L. HUNTON, *U. S. Att'y.*
H. H. STRAWBRIDGE,
Attorney for appellees.

And finally, on the 3d November, 1851, was filed the following

"Agreement as to transcript."

NANCARROW'S adm'rs
vs.
The United States. } No. 142.

In the district court of the United States, for the district of Louisiana.

In this case it is agreed that in making up the record of appeal for the Supreme Court of the United States, only the documents actually filed with the petition or on trial shall be copied into the records. The documents and testimony used and on file in the suit of the Mayor, Aldermen, and Inhabitants of New Orleans and Philadelphia *vs.* The United States, No. 21 of the land docket of this court, shall be used in said Supreme Court as if actually copied into the record of this cause, and shall be held and taken as part thereof; the copying of the same into the record of the case being dispensed with by this agreement.

(Signed) H. H. STRAWBRIDGE,
Solicitor for complainants.

New Orleans, 30th Oct., 1851. LOGAN HUNTON,
U. S. attorney.

UNITED STATES OF AMERICA,
Eastern district of Louisiana.

I, Needler R. Jennings, clerk of the district court of the United States, sitting at New Orleans, in and for said district, do hereby certify, that the foregoing thirty and a half folios, inclusive of a plat on folio 13, contain and form a true, faithful, correct, and complete transcript of all the proceedings, process, pleadings, documents, and other matters on file and of record in a certain cause in chancery, (quasi,) wherein Nancarrow's administrators are complainants, and the United States of America are defendants, No. 142 of the land docket of said court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, this twenty-
[SEAL.] second day of November, one thousand eight hundred and fifty-one, and seventy-sixth year of American independence.

N. R. JENNINGS, *Clerk,*
By ROBT. M. LUSHER,
Deputy clerk U. S. district court, eastern district of Louisiana.

I, Theodore H. McCaleb, judge of the district court of the United States, for the eastern district of Louisiana, do certify, that N. R. Jennings, who, by Robert M. Lusher, his duly and legally appointed and qualified deputy, subscribed the above certificate, was at the time of signing the same, and is now, the duly appointed and legally authorized clerk of said court; that full faith and credit are due and ought to